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MEETING OF THE DELTA STEWARDSHIP COUNCIL

HELD AT THE RAMADA INN & SUITES

1250 HALYARD DRIVE

WEST SACRAMENTO, CALIFORNIA 95691

THURSDAY, JANUARY 24, 2013

9:32 A.M.

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REPORTED BY: JILLIAN M. BASSETT, CSR No. 13619

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1 BE IT REMEMBERED, that on Thursday,
2 January 24, 2013, commencing at the hour of 9:32 a.m., at
3 the Ramada Inn & Suites, 1250 Halyard Drive,
4 West Sacramento, California before me, JILLIAN M. BASSETT,
5 a Certified Shorthand Reporter in and for the county of
6 Sacramento, state of California, was present and recorded
7 verbatim the following proceedings:

8
9 P R O C E E D I N G S

10
11 MR. ISENBERG: All right. Ladies and gentlemen,
12 Delta Stewardship County Council is called to order.
13 Notice the absence of the quorum. We'll establish quorum
14 Supervisor Nottoli told me he had a separate meeting this
15 morning and he would be a bit late, and we expect him to
16 arrive shortly.

17 Just for your information, I did a count. I
18 think this is the 91st day of meetings since we started in
19 April 2010. It seems like the 476th day of meetings
20 instead. But this is at least the 91st day of full
21 meetings.

22 The agenda for those of you who picked up a copy
23 outside is unique in the sense that the first block of
24 time, from 9:30 this morning till 11:30, is designated as
25 a hearing to receive public comments on the proposed

1 rulemaking package.

2 A week ago -- was at the 11th or the 14th, I
3 guess, of this month we held a separate, in additional,
4 hearing suggested by Supervisor Nottoli to receive at this
5 time comments of individuals who were either unable to be
6 here or did not plan on submitting written comments. And
7 three members of the Council were there. We conducted the
8 hearing, and I believe the web broadcast of that is posted
9 on the Web site already.

10 This is the final time for hearing comments at
11 the end of the noted session. And as required by law,
12 this hearing includes a court reporter who is sitting to
13 your left, if you're in the audience, who does a
14 transcript of this part of the hearing.

15 We record all of our meetings and we simulcast
16 almost all of them. And we then post a copy of the
17 meetings on our Web site. So if any of you are interested
18 in referencing past meetings of the Council or agenda
19 items that were discussed, then you can find the full
20 block of information and videos available on our Web site.
21 Because this is a legally required hearing and focused at
22 a specific issue, the rulemaking procedure, we are going
23 to start off with our Executive Director describing the
24 comments, the rules, the requirements of law and so on.

25 And what I'm going to ask the audience to do,

1 over on the table to your left, the two ladies sitting at
2 the end have blue forms. And these are speaker forms if
3 you wish to speak. Many of you have submitted some
4 already. And I've noticed since many of you have been
5 here before to other meetings, you did it the right way.
6 You printed your name so we can get the spelling correct.
7 That is really important. You identified the organization
8 you are speaking for, if there's an organization.

9 And what is uniquely important for us at these
10 hearings, some people have identified the subject matter
11 they wish to discuss in general terms. That's very
12 helpful to us. So any other persons who have not
13 completed the forms, if you would go grab a blue form,
14 fill it out and give it back to the ladies, we are taking
15 you in which the order the blue form was submitted.

16 Mr. Chris Knopp, our Executive Director will
17 describe the first part of the meeting to us.

18 MR. KNOPP: Good morning, everyone. And thank
19 you so much for coming today. It's great to see a crowd
20 like this. I wish we had this many people at each Council
21 meeting.

22 Today is -- for the record I have to read in a
23 few things here, because this is an organized meeting and
24 we're -- as Phil had mentioned, we're recording this.

25 So for the record it's 9:30 on

1 January 24th, 2013. We're at the Ramada Inn at
2 1250 Halyard Drive in West Sacramento. And the purpose of
3 today's hearing is to receive testimony on the Delta Plan
4 Draft Rule Making Package. Notice of which has been
5 previously published and sent by mail to interested
6 parties pursuant to the California Administrative
7 Procedures Act. This follows a 45-day written comment
8 period required by the Administrative Procedures Act. And
9 comments closed on January 14th. On January 11th the
10 Council held a meeting, as was previously mentioned, to
11 hear comments on the Recirculated Draft EIR and the
12 Delta Plan.

13 So the purpose of today's meeting, though, is to
14 receive public testimony. Witnesses presenting testimony
15 won't be sworn in, nor will the Council engage speakers in
16 any kind of discussion or debate or cross-examination of
17 any witness. We'll take, under submission, all written
18 and oral statements submitted or made during the hearing,
19 and we'll respond to those comments in writing in the
20 final statement of reasons.

21 If you wish to provide testimony, as our chairman
22 mentioned, please fill out a blue speaker card. We'll
23 take you in the order that those cards were received.
24 We'll also receive written comments; however, until
25 5:00 p.m. close of business today either as long as we're

1 here today or at our office at 980 9th Street in
2 Sacramento.

3 One other point, we've got a lot of folks here
4 today. And we ask that you be respectful of other folks
5 in the audience and take your comment period there and
6 make it as short as you can, but give us the information
7 that you need to give us. If someone else has already
8 made a comment that you agree with, please don't repeat
9 that comment. Just go ahead and say you agree with it and
10 go forward. In the case that someone's taking extra time,
11 I do reserve the right to cut you off so that we get a
12 chance to hear from everybody.

13 Finally, when you come up to speak, there's a few
14 protocol items. Please state your name clearly and the
15 topic that you want to talk about. And then we'll get
16 going. And I think we're ready to begin.

17 MR. ISENBERG: Okay. Thank you very much.

18 Alright. Ladies and gentlemen, in the order in
19 which I've received submission, the first speaker is
20 Jan McCleery from the Save the California Delta Alliance,
21 and the note is Disco Bay. For those of you who don't
22 recognize it, it's Discovery Bay, the community of
23 Discovery Bay as well.

24 After her will be Mr. DiCroce from the
25 Environmental Water Caucus.

1 Ms. McCleery?

2
3 JAN McCLEERY

4 SAVE THE CALIFORNIA DELTA ALLIANCE

5
6 MS. McCLEERY: Chairman Isenberg and members of
7 the Council, thank you for giving me the opportunity to
8 meet with you today concerning the rulemaking policies
9 related to the Delta Plan.

10 My name is Jan McCleery, and I'm here today as
11 the President of Save the California Delta Alliance,
12 STCDA, a Grass Roots organization based in Discovery Bay,
13 but representing a wider membership of Delta and Bay Area
14 concerned citizens. Some of who you see here who came to
15 demonstrate our concerns, the group here.

16 Can I move this up a little?

17 But also as a Discovery Bay resident, moving
18 there after 35 years of working in Silicon Valley as a
19 software engineer. So first I'd like to give a little
20 prospective as a Discovery Bay citizen; although our
21 overall concerns are Delta-wide.

22 During the 35 years in Silicon Valley our family
23 spent most of the summer weekends on the Delta skiing,
24 anchoring out, and enjoying the peace birds and warm
25 weather. Naturally we wanted to retire where we most

1 enjoyed being. And our kids come and visit us often
2 because they love it there, too.

3 So I applaud the plan for recognizing the Delta
4 as a place, and as voting it being an important aspect of
5 the Delta. But I was surprised the only mention of the
6 Discovery Bay as a place was in a list of towns on
7 page 182, discussing where the population was increasing
8 in the Delta. And I believe it warrants some additional
9 recognition and specific protections in the plan.

10 So Discovery Bay is a unique community of 3,500
11 waterfront homes -- pass that over. Waterfront properties
12 guarder a higher home value. And the typical lot size is
13 only 60 by 120. So the backyard is the deck over the
14 levee rip-rap.

15 MR. ISENBERG: Ms. McCleery, let me just pause
16 for a moment. For people who are wondering what's on this
17 photograph of Discovery Bay, we don't have any ability to
18 project it for the simulcast, but we will post submitted
19 documents that you give to us later on our Web site if
20 people want to go back and look at it.

21 MS. McCLEERY: Thank you.

22 So the dock of the ramp, and there's no room for
23 a swimming pool. The Delta is our swimming pool.

24 In the summers you'll see the docks full of
25 families. Kids and grand kids swimming, dogs chasing

1 balls, people going by on paddle boards and kayaks. The
2 ski boats head out in the early morning to get the smooth
3 water in the near by sloughs. And the big boats head out
4 for a weekend anchored out at a local anchorage or at one
5 of the Delta marinas or beyond to Stockton, to Sacramento,
6 up the Napa River, up the Petaluma Slough, all the way
7 down to the Downtown Harbor. Or for a weekend on the
8 San Francisco's China Basin right next to the Giants' ball
9 park or out the Golden Gate and beyond.

10 The Discovery Bay Town Center is probably the
11 wide channel near the Marina where we hold our yearly
12 paddles for fame. One more picture. Where we've twice
13 set the Guinness Book of World Records for the most
14 non-motorized vehicles together at the same time. And
15 right next to that at the top of that picture is the
16 Marina Grain. That's probably our main street. That's
17 where all our community events occur and everything
18 happens.

19 In addition, in the summer, additional people
20 from the other Delta or Bay Area communities launch boats
21 at the launch ramp or keep boats full time stored in the
22 Marina. Hundreds of large boats and a shed full of ski
23 and fishing boats stacked seven high. Those people all
24 come to Discovery Bay, they visit the Marina Board Walk
25 Shops, eat at the Boardwalk Grill or visit the Discovery

1 Bay Yacht Club. There are big cat poker rooms, bass
2 fishing derbies, held between the various Delta
3 communities bringing people from all over the various
4 Delta towns. Even if people do not live on the water, the
5 economic basis and center of the community is the Marina
6 boating and the water. That's our concerns.

7 We are not in the main flow of the
8 Sacramento River. We are far south right above the pumps.
9 Due to its low flow, the San Joaquin River already
10 contains extensive salts and chemicals leached out from
11 Westlands Farms. If the millions of gallons of water that
12 now flow down through our community, particularly the
13 cleaner Sacramento River water that we now receive, is
14 diverted around or under us, it's hard to see how we will
15 not be negatively impacted. If salt water intrudes, will
16 our backyards be brackish and stagnant water?

17 Many communities -- of course Delta -- Discovery
18 Bay is not alone in the reliance on fresh water Delta.
19 Many communities rely on the Delta for their economies.
20 The surrounding Delta farms, some of the most fertile land
21 in the world, depend on fresh water. We are far in the
22 south, since we feel more risk, although the environmental
23 concerns are echoed by our members throughout Northern
24 California. We are concerned with the lack of
25 restrictions on exports on the flow in the plans.

1 My second point is about boating. Boating was
2 included in the plan, but there's no specific requirements
3 or restrictions called out to protect boating. In August
4 of 2009 my husband and I were anchored out at our favorite
5 Mildred Island Anchorage, and two bass fishermen came up
6 and handed us a flyer about the Two Gates Fish Protection
7 Project. To install two gates within three months in the
8 two main channels block key boating waterways. We didn't
9 think that was legal.

10 There is one channel -- one of the main channels
11 that has a railroad trestle, which is the only link
12 Discovery Bay boaters have through the Delta and Bay. But
13 it has two redundant bridges on it to meet navigation
14 requirements. The primary bridge cannot be shut down for
15 maintenance, according to U.S. Coast Guard Requirements,
16 unless the alternate bridge is operational 24 by 7. The
17 gates have no operational requirements. Plus, we didn't
18 see how gates blocking the migrating fish would protect
19 them. In response to the threat of the Two-Gates Project,
20 the STCDA was quickly formed and 2000 comment cards were
21 collected and hand delivered to the USBR.

22 The CalFed Independent Science Team reviewed the
23 project and concurred there was no science behind their
24 function. The gates could kill smelt instead of protect
25 them. The application for permit was withdrawn, yet up to

1 14 gates have been proposed by the BDCP in various
2 locations labeled as salinity gates which would impact
3 boaters.

4 We believe the Delta Plan has taken a key step
5 identifying boating as important, but believe this
6 conclusion should be backed up by requirements to maintain
7 navigation rights as guaranteed by the Rivers and Harbor
8 Act and to protect the rights of all boaters to navigate
9 freely throughout the Delta.

10 Our home values depend on us being able to
11 continue to navigate the rest of the Delta and beyond.
12 The right of others to come to Discovery Bay by boat to
13 support our economy is also a vital importance to us.
14 Boaters come from all over Northern California to this
15 unique area, which is best explored and enjoyed from the
16 waterways. The construction of multiple gates throughout
17 the Delta is contrary to preserving the Delta as a place,
18 and in fact would destroy it's unique quality as a boating
19 wonderland.

20 MR. ISENBERG: Okay.

21 MS. McCLEERY: Lastly, Save the California Delta
22 Alliance submitted a formal set of comments in response to
23 the notice of proposed rulemaking Delta Plan. As detailed
24 in that document, we respectfully request that revisions
25 be made to the regulations. To look ahead and prepare for

1 the time when the BDCP will come before the Council. One
2 area where the Council will be hard pressed to review the
3 BDCP with the current state of the Delta Plan is
4 alternative. Various alternatives have been proposed,
5 including Dr. Pike's concept for a new intake at Sherman
6 Island, or restructuring the current location with state
7 of the art fish screens. Or better still, options which
8 avoid removing additional water from the Delta by
9 leveraging the million-acre feed of water now diverted
10 into the flood control structures on the Sacramento River
11 north of the proposed point of diversion. Water which
12 never flows through the Delta or south, the Two Layer Lake
13 Basin Restoration Proposals or desalinization to improve
14 regional self-sufficiency.

15 We understand the position the Council has taken
16 concerning the BDCP. But the BDCP is focused on only one
17 alternative, exporting more water from the Delta than is
18 currently exported. Which will increase salinity and
19 deteriorate our water quality. We think that the Council
20 can and should evaluate the merits and the feasibility of
21 the various option.

22 We need a bigger picture approach to the Delta
23 Plan. Our home value depends on it; our economy depends
24 on it; our community depends on it.

25 Thank you for your consideration.

1 MR. ISENBERG: Thank you very much. We have a
2 quorum present. For purposes of the record, let us
3 establish a quorum starting with Mr. Johnston.

4 MR. JOHNSTON: Here.

5 MR. ISENBERG: Ms. Gray?

6 MS. GRAY: Here.

7 MR. FLORINI: Florini is here.

8 MR. ISENBERG: Isenberg here. Quorum is present.
9 Mr. DiCroce from Environmental Water Caucus.

10
11 NICK DICROCE

12 ENVIRONMENT WATER CAUCUS

13
14 MR. ISENBERG: Good day, sir. Good to see you
15 again.

16 MR. DICROCE: Good morning. My name is
17 Nick DiCroce with the Environmental Water Caucus, which
18 I'm going to refer to as the EWC from this point on.

19 My purpose to be here is to provide some comments
20 on the rulemaking package. Comments which expand and
21 amplify what we have previously submitted.

22 The EWC's overall critique of the Delta Plan
23 process is that it still lacks three critical, analytical
24 components; a water supply analysis, a cost benefit
25 analysis, and a public trust analysis. And along similar

1 lines, the EWC also has deep concerns with your CEQA
2 treatment, as you'll hear in my comments in a moment.

3 The EWC provided extensive written comments on
4 the proposed regulation, which can be found on page 102 of
5 our January 14th comprehensive comments, which were also
6 submitted. And also, I'm submitting a separate document
7 today that reflects these comments which I've already
8 given to Angela over there.

9 To summarize, EWC believes that the proposed
10 regulation does not satisfy the mandate to carry out a
11 legally enforceable Delta Plan that protects the coequal
12 goals as set forth in the Delta Reform Act. Indeed the
13 proposed regulation excludes actions that should be
14 classified as covered actions, and includes policies that
15 fall outside the regulations enabling statute.

16 First of all, the covered actions are defined too
17 narrowly. Under the definition of Section 5001,
18 significant impacts is inappropriately defined as a change
19 in baseline conditions. Rather than based on so-called
20 baseline conditions, the definition we feel should be
21 revised so that significant impact is measured as an
22 absolute value. Without this change, there will be a
23 large cross-section of actions with impacts on the coequal
24 goals, which will be improperly excluded from covered
25 actions under the Delta Plan.

1 Secondly, exemptions from the Delta Plan,
2 Sections 5002 and 5003, exceed the statutory authority
3 provided by the Delta Reform Act. The Delta Plan's
4 coequal goals include economic and cultural values not
5 contemplated by CEQA. Yet the draft regulations adopts
6 the same exemption criteria as CEQA, but without CEQA's
7 statutory basis for those exemptions. And impermissible
8 conflating of the two statutes. CEQA exemption criteria
9 may not be adopted by the proposed regulation without
10 statutory authority, which it lacks. Likewise, statutory
11 basis for the emergency exemption, 503, B2B is not
12 contained in the Delta Reform Act, and therefore should be
13 no emergency exemption for compliance with the Delta Plan
14 without adequate statutory authority.

15 Exclusion of temporary water transfers,
16 Section 5003, B2C. It is not stated why these transfers
17 are excluded, as they would otherwise be covered actions
18 under the Delta Plan. As we all know, temporary transfers
19 can be very large, can reoccur for consecutive years,
20 giving them the impact of a permanent transfer. This
21 exemption for temporary transfers exceeds the statutory
22 authority for the Delta Plan and should be removed.

23 Reduced reliance on the Delta, Section 5005,
24 throughout the proposed regulation, but particularly in
25 regard to reducing reliance on the Delta, a lack of

1 measurable results, meaningful performance measures
2 undermine the legitimacy of consistency determinations
3 within the Delta Plan. Without quantifiable assessments
4 in the consistency determination, the plan will not be
5 legally enforceable. If the project does not make a
6 quantifiable improvement in achieving the coequal goals,
7 then it should not receive a consistency determination.

8 Violations of CEQA and Public Trust Documents,
9 Section 5005 E. The regulation including calling for
10 improved Delta conveyance and operations and optimized
11 versions in what years cannot be lawfully adopted, because
12 there has been a failure to comply with CEQA for all the
13 reasons set forth in our comments pertaining to the
14 recirculated PEIR.

15 The regulation calling for improved -- meaning
16 new conveyance -- also cannot be lawfully documented
17 because there has been failure to perform the cost
18 benefit, and the public trusts analysis to ensure
19 protection of the Delta.

20 Separately, because the Delta Stewardship Council
21 is a trustee agency, the proposed regulation must require
22 the Council to consider whether a covered action is
23 consistent with the Public Trust Doctrine, and make a
24 consistency determination on that basis. The Council must
25 make a consistency determination that is administerial

1 duty, which the Delta Stewardship Council must fulfill
2 when judging a covered action.

3 The proposed regulations failure to include a
4 Public Trust's consistency determination as a component of
5 judging a covered action violates the Public Trust
6 Doctrine and associated Case Law on its face.

7 Updated flow objectives, Section 5007. The Delta
8 Reform Act does not require that the Delta Stewardship
9 Council direct, manage, or provide guidance to the State
10 Water Board setting of Delta flow requirements. Rather
11 the Delta Reform Act requires the State Water Board update
12 the Delta flow objective consistent with the Public Trust
13 Doctrine based on recommendations from the Department of
14 Fish and Wildlife, which is part of State Water Code.

15 To emphasize the point, the Delta Reform Act
16 clearly states that nothing in this division expands or
17 otherwise alters the State Water Board's existing
18 authority to regulate the diversion and use of water. And
19 furthermore, the act does not affect the Public Trust
20 Doctrine. As a result, the Council has no authority to
21 propose a regulation that guides or places any condition
22 on the State Water Board setting of Delta flow
23 requirements. Instead, the State Water Board is required
24 to submit its flow criteria determination pursuant to this
25 section to the Council.

1 Further, to the extent of this section of the
2 proposed regulation purports to set out criteria to
3 determine whether the Board's Delta flow requirements are
4 consistent with the regulatory policies of the Delta Plan.
5 It is plainly contrary to the scope of the act. This
6 section exceeds the scope of the enabling statute and
7 should be removed.

8 And finally, and perhaps most critically, the
9 Delta Reform Act does not allow the Water Board to set
10 Delta flows that are necessary to achieve the coequal
11 goals. As stated in Section 5007, rather the Delta Reform
12 Act and judicial precedent require the Board to set such
13 goals consistent with the Public Trust Doctrine and the
14 coequal goals are not synonymous with the protection of
15 Public Trust resource.

16 As written, this section perverts the expressed
17 language of the Delta Reform Act regarding the Board's
18 duty to abide by the Public Trust Doctrine when setting
19 Delta flows, and should either be removed or modified.

20 Thank you very much for letting us present our
21 contrary comments. And I've given a copy of those as I
22 mentioned to Angela.

23 MR. ISENBERG: Thank you very much.

24 The next speaker is Mr. Roger DiFate, if I
25 pronounced that correctly from Discovery Bay. And after

1 Mr. DiFate, Mr. Bob Wright with Friends of The River.

2

3 ROGER DIFATE

4

5 MR. ISENBERG: Did I get your name almost right?

6 MR. DIFATE: No.

7 MR. ISENBERG: Well, sorry about that. My
8 apologies.

9 MR. DIFATE: My name is Roger DiFate, and I live
10 in Discovery Bay. This is an important meeting for me and
11 to the people that have come here to address you. This is
12 an extremely serious situation for us, especially in
13 Discovery Bay.

14 One of the things I'd like you to understand is
15 our homes are built on the water. We require title flow
16 to move the water in our sloughs and our bays. Without
17 that title flow or interruption of that title flow, what
18 we have is a stagnant community. Now, could you imagine
19 the water -- I mean, it's not pumped around. As the tide
20 moves up and the tide moves down, that water moves within
21 our estuary. So the fish, the boating, the swimming,
22 everything is extremely important to us. Every time water
23 is diverted and moved around, we are -- a stagnant
24 condition in our community is affected.

25 So that will give you a grasp of the intensity of

1 the homeowners and the people that live on the Delta,
2 Bethel Island, and the waterfront communities that you're
3 going to affect our outcome. Our children, our
4 grandchildren all grow up with this environment that we
5 live in. It's a very pristine, beautiful setting. That's
6 why we live there. We pay extra in our taxes and in our
7 community development to live in that pristine
8 environment.

9 As a result of that, maybe we have more emotional
10 effects about the Delta. Because a large majority of us
11 are boaters, fishermen, outdoorsmen. And we get out to
12 the Delta, and we boat in the Delta and we live in the
13 Delta.

14 I'm an avid fisherman. So I fish three days a
15 week. If any of you need a first-class view of the Delta,
16 give me a call. I'll take you out and show you some
17 things on the Delta that would be important to you.

18 So water management and water flow are
19 dramatically important to us. And I'm sure to you. But
20 one of the things in reading your document I did not see
21 was some alternatives. Alternatives that will help the
22 estuary and the community. An example of this is on the
23 Saint Lawrence Seaway, connecting New York and Canada are
24 32 hydroelectric generators. Thirty-two that run
25 twenty-four hours a day and locks adjacent to those that

1 transport oceangoing shipping through the Saint Lawrence
2 Seaway. I don't see anything of that nature on your
3 agenda or on your schedule.

4 Where are the alternatives for our brilliant
5 minds in technology in California? We have people in
6 California that are brilliant. I don't see that in the
7 documents I read with you. And maybe that's because
8 there's not enough local involvement in your committees.
9 Because we have brilliant people. Brilliant people
10 waiting to help you. If that document is representative
11 of where we are going in California with our water
12 management, we are doomed. Get rid of those people and
13 hire some new people with some new ideas. Give us some
14 really good alternatives. Because we need them, and the
15 people of California and the GMP of the community and
16 those farmers need that water. And they need to protect
17 the environment in which we live in.

18 Gentlemen, ladies, this Stewardship panel has a
19 trust. And we, the people of California, are intrusting
20 to you not only a special gift, but you have a moral
21 obligation to use the best science possible. Don't be
22 influenced by the Enrons and NWDs of this world. They're
23 opportunists looking for water and selling water. We
24 cannot afford to look only at that agenda. We need the
25 best science possible.

1 Are we all shaking our heads yes? We all agree?
2 The best science possible? Because going forward, the
3 communities and the people and the water distributors all
4 have to live together on this earth.

5 Thank you very much.

6 MR. ISENBERG: Thank you, sir.

7 Mr. Wright, Bob Wright, Friends of the River.

8 And after that, Mr. Doug Wallace from East Bay MUD.

9

10 BOB WRIGHT

11 FRIENDS OF THE RIVER AND ENVIRONMENTAL WATER CAUCUS

12

13 MR. ISENBERG: Mr. Wright, good to see you again,
14 sir.

15 MR. WRIGHT: Good morning, again, Mr. Chairman
16 and Council members.

17 I'm making my comments on behalf of Environmental
18 Water Caucus and Friends of the River. And I don't want
19 to repeat anything we've said before, either written
20 comments -- oral comments a couple of weeks ago or in the
21 various written water comment letters. But just by way of
22 summary and introduction to what I think is a rather
23 important proposal, we're going to present to you today
24 about several proposed amendments to your regulations.

25 Just to set the stage for that, we've talked in

1 the past about how --

2 MR. ISENBERG: Sir, these are in addition to
3 comments you made at the last hearing?

4 MR. WRIGHT: Yes. Absolutely.

5 MR. ISENBERG: Okay. New things. All right.

6 MR. WRIGHT: That we've talked in the past about
7 how their admitted water quality and endangered species
8 impacts that would result from the Delta Plan and
9 regulations, and how the plan and your past environmental
10 documents themselves really contained admissions of work
11 that needed to be done to assess environmental issues that
12 hasn't been done.

13 So with that said, from our perspective it's
14 always best to talk and negotiate before fighting. And
15 particularly appropriate with future secretary of state
16 John Kerry talking about those kinds of things this
17 morning back in Washington.

18 And from our prospective, we really don't know if
19 it's actually the intention of the Council to plan for,
20 recommend, encourage, call for new conveyance optimizing
21 diversions of the massive new upstream conveyance from the
22 Delta in the form of the Delta tunnels that the exporters
23 want. Because we recognize that it's possible, that given
24 in your own draft EIR, you are anticipated and set forth,
25 you're expecting the BDCP plan and EIR/EIS with all the

1 information that would presumably contain, to be out in
2 mid 2012. And that didn't happen. That perhaps the
3 Council doesn't really have the intention to, at this
4 point in time, start us down the course of massive new
5 conveyance upstream from the Delta.

6 There's something new that we've not sited to you
7 before at all. And it's in your rulemaking package. It's
8 your own initial statement of reasons. Particularly as
9 pertaining to regulations Section 5007. And at pages 5
10 through 6 of that document, your statement of reasons
11 talks about the best available science suggests that the
12 currently required flow objectives within and out of the
13 Delta are insufficient to protect the Delta ecosystem.

14 There is more that it says, including to
15 summarize briefly, the ideas for the State Water Resources
16 Control Board do an established and accelerated process to
17 determine in-stream flow needs for the Delta for the
18 purposes of facilitating the planning decisions that are
19 required to achieve the objectives of the Delta Plan.

20 And what we say to you about that is those
21 statements we agree with. They appear to be clearer and
22 indisputable. And that being the case, it would be
23 directly contrary to those statements to proceed now to
24 make planning decisions calling for or facilitating new
25 upstream conveyance for the exporters, because your own

1 statement of reasons indicates that it's necessary at
2 first for the Water Board to make their determinations for
3 those type of planning decisions to be made.

4 And so what we've done is prepared a very short
5 letter. The signature is on the fourth page. But to be
6 fair, it's a two-and-a-half to three-page letter. And one
7 page consists of just several amendments we proposed to
8 you to Section 5007 of your regulations that you're
9 considering today.

10 We suggest keeping, as you've drafted them,
11 subsections A and B. We propose you delete subsections C
12 and D and adopt new subsections C and D that we propose in
13 exact regulatory language for you. And basically they
14 indicate that there's a statement in your regulations that
15 your plan and regulations in fact do not call for new
16 conveyance, do not plan for that, and that anything
17 anywhere else in the regulations or Delta Plan contrary to
18 that would be controlled by new subsections C and D.

19 In addition, a couple of brief almost one-line
20 changes to your general definitions in Section 5001,
21 subsection E1A and E1C to make clear that in your
22 definitional sections you're not making a planning
23 decision calling for new conveyance. And we as Friends of
24 the River would invite the Council through your legal
25 Council or your Executive Officer to communicate with me

1 or Mr. DiCroce if you have any interest in pursuing either
2 our amendments or possibly amending our proposed
3 amendments. We have set it out for you, and I will put
4 this letter into the record with Angela.

5 MR. ISENBERG: Okay. If you could give her the
6 letter as soon as you're through, we'd appreciate it.

7 MR. WRIGHT: And unless there are any questions,
8 I am through. And I appreciate your time.

9 MR. ISENBERG: Mr. Wright, thank you very much.

10 Mr. Doug Wallace from East Bay MUD. And after
11 Mr. Wallace is Mr. Jim Hall from Discovery Bay.

12 Mr. Wallace?

13

14 DOUG WALLACE

15 EAST BAY MUD

16

17 MR. WALLACE: Good morning, Mr. Chairman and
18 members of the Council. My name is Doug Wallace. I'm
19 representing East Bay MUD today and every day.

20 For the duration of our involvement with Delta
21 Council we have strived to assist you in providing
22 constructive feedback in order to advance the plan, not to
23 change your direction or rethink the statute.

24 We did submit a comment letter nine pages long
25 last week. I'd like to curry your favor today by not

1 reading it.

2 MR. ISENBERG: Thank you.

3 MR. WALLACE: You're welcome. But I will
4 summarize, because there are important points that I would
5 like to highlight for you.

6 There are two perspectives we come with. One is
7 our experience with the Office of Administrative Law and
8 what they normally look for in a regulatory package.

9 And secondly, of course, as a potentially
10 regulated party, we're looking at these regulations and
11 seeing some structural problems. And I will try to
12 summarize. The bases that we've reviewed these
13 regulations on was looking at the criteria in the
14 Administrative Procedures Act. Several of them, including
15 necessity, non-duplication, consistency and clarity. And
16 we look through these regulations and see quite a bit of
17 verbiage that is essentially not necessary. It's
18 narrative in nature. We have a number of definitions that
19 have policy language woven into them. And so the
20 simplicity is missing.

21 And, in fact, when we really boil down within
22 these regulations, we think you and the regulatory parties
23 would be a lot better off if they were slimmed down
24 significantly. They could be clarified by limiting the
25 proposal to straightforward regulatory requirements that

1 you are empowered to promulgate by statute. And removing
2 narrative statements that talk about policies of the state
3 or items that the Council contemplates. Or discussions
4 with what the State Board, for example, could or should
5 do. That's a recommendation essentially that is not a
6 regulation that you'll see in whatever section of the
7 ranks. It's in there concerning the State Board flows and
8 their process for amending the flow requirements.

9 Definitions are very long and complex. As I
10 said, they include actionable language. I'm going to give
11 a couple of examples, too, of where we feel there are some
12 regulations here that are simply not necessary. There are
13 a number, but I want to keep my time here brief.

14 The improved transparency in water contracting.
15 These provisions are already required by DWR and the
16 Bureau. There's no evidence really provided that the
17 compliance with those requirements is currently
18 inadequate. So these are what we call duplicative and
19 don't need to be in the regulations.

20 And secondly, another example is the Council has
21 included a section on prioritization of state investments
22 in Delta levees. A very critical responsibility to
23 Council. That's not something you have to regulate
24 yourselves. This is something you can adopt by guideline,
25 or it's in the Delta Plan. A tremendous amount of the

1 regulatory language simply reiterates what's in the Delta
2 Plan. And I think that's where that should be. Anybody
3 who is going to be submitting a consistency determination,
4 we should hope they read the Delta Plan. They don't need
5 to have it reiterated and re-explained in the regulatory
6 language.

7 In our experience with OAL, this is not the kind
8 of package -- they would be looking at this, and we will
9 be a little surprised if they accept it the way it's
10 written.

11 On a substantive level, we want to ask the
12 Council to reconsider the inclusion of actions -- of
13 covered actions that have a beneficial impact on achieving
14 the coequal goals. I've heard the explanation for this
15 from staff. I understand it. But overall the concern is,
16 if you look at the near-term actions, they unfortunately
17 have become sometime-maybe actions. There are already so
18 many obstacles in the way of achieving things. We all
19 recognize our actions that need to take place in the
20 Delta. And including those as a covered action,
21 submitting a consistency of determination with all the
22 costs involved is another regulatory barrier. And so I
23 know that's part of the Delta Plan. But we would ask you
24 to rethink that.

25 So again, my closing comment is we think this

1 needs another shot as you look and consider all the
2 comments that you've received from stakeholders. Look at
3 the APA standards for the regulations and see if we can be
4 a little simpler with them.

5 MR. ISENBERG: Thank you, Mr. Wallace.

6 MR. WALLACE: Thank you very much.

7 MR. ISENBERG: Thank you.

8 Next is Mr. Hall from Discovery Bay. And after
9 Mr. Hall is Cindy Kao from Santa Clara Valley Water
10 District.

11 Mr. Hall?

12

13 JIM HALL

14

15 MR. HALL: Good morning, gentlemen and ladies.
16 My name is Jim Hall. I currently reside in Discovery Bay,
17 but I'm a native Californian. Grew up and was raised in
18 the Southern California area and have moved up into the
19 Northern California area in the '70s.

20 I think -- I'm going to try to be brief in the
21 state of one point. But I think we all agree how unique
22 the Sacramento Delta area is. It's the most unique -- or
23 is the unique Delta in all the United States with its
24 fresh water tributaries and conditions that make it much
25 different than the Mississippi and that. And it is the

1 only Delta west of the Rockies. So obviously this group
2 and all of the people here wish to see it remain in
3 perpetuity.

4 The items that I see are uniquely -- I'm uniquely
5 able to see or been involved in, is I do own property in
6 Southern California. Quite a bit of property in the
7 Orange County, Los Angeles Counties, and we've had stuff
8 in the San Bernardino counties. And we've owned these
9 properties since the mid '70s. So we've been back and
10 forth between the Delta and Southern California and seen
11 some of the issues that we're dealing with.

12 And one of the things that I've noticed since the
13 mid '70s, we have never seen a concerted effort in the
14 Southern California areas to conserve water. When I came
15 up from Southern California and seeing people having to
16 water every other day, their lawns went brown, and people
17 were very interested in conserving water and dealing with
18 those issues.

19 This has never really caught on in the
20 Southern California area, which is going to be the
21 end -- one of the end major users of the water that we're
22 diverting from the Delta. I think along with what Roger
23 has said before me about technology -- well, it does not
24 appear as if anybody is looking at trying to control the
25 consumption at that point, which would reduce the need to

1 pump further water from the Delta. I don't know how this
2 district or this agency can work with that and work with
3 the agencies that are trying to divert water before it
4 gets to the Delta.

5 But all these are intermingled. And I don't see
6 how you can come up with a true solution without involving
7 all of these other issues that virtually spread the entire
8 length of the state.

9 I started using the Delta when I was nine years
10 old in 1957, and have been using it ever since. But still
11 I am greatly concerned with the Southern California area.
12 And so I just want to bring that simple point about that
13 we need to look at all aspects of water usage in
14 California, which will ultimately come back and impact the
15 quality of the water in the Delta.

16 Thank you very much.

17 MR. ISENBERG: Thank you very much, Mr. Hall.

18 The next speaker is Ms. Kao from the Santa Clara
19 Valley Water District. And after that is Mr. Zuckerman.

20 Ms. Kao?

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1 CINDY KAO

2 SANTA CLARA VALLEY WATER DISTRICT

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4 MS. KAO: Thank you.

5 Cindy Kao with the Santa Clara Valley Water
6 District.

7 MS. ISENBERG: Let's see if we can get a little
8 more volume on the microphone for you because we're
9 broadcasting this.

10 MS. KAO: We appreciate this opportunity to
11 comment on the proposed rulemaking package for the Delta
12 Plan. The Santa Clara Valley Water District is a public
13 water agency with contracts for delivery of water supplies
14 conveyed through the Delta by both the State Water Project
15 and the Federal Central Valley Project. These supplies
16 meet approximately 40 percent of Santa Clara County's
17 average annual demands.

18 We supply water to a population of 1.8 million in
19 the vibrant economy of Silicon Valley. The district has
20 adopted water supply management strategies that will
21 reduce reliance on imported water from the Delta, and
22 result in meeting Santa Clara County's future water needs
23 through water use efficiency. But, even with aggressive
24 development of local supplies in continued emphasis on
25 conservation, the District's imported supplies will

1 continue to provide essential baseline water supply to our
2 county, reliability needed to avoid groundwater
3 over-drafting and subsidence, meet core demands, and
4 provide environmental enhancement in our local streams.

5 We are concerned that the proposed regulation to
6 reduce reliance on the Delta attempts to give the Council
7 the discretion to review and judge local water management
8 decisions outside the legally defined Delta. The Delta
9 Reform Act does not provide the Council with this
10 authority.

11 Instead of promoting efficient implementation of
12 projects that will contribute to local and regional supply
13 reliability, this would add another layer of potentially
14 burdensome review that will likely impede progress as well
15 as increase costs to the public. Agencies such as the
16 district that have been successfully and proactively
17 advancing local supply reliability and environment
18 sustainability should not be subject to this process.

19 The proposed regulations also state that water
20 shall not be exported from, transferred through, or used
21 in the Delta if one or more water suppliers that would
22 receive this water has failed to adequately contribute to
23 reduce reliance on the Delta and improve regional
24 self-reliance. This requirement puts at risk a water
25 wholesaler's ability to provide water supply reliability

1 if one or more of its retailers is not fully compliant.

2 The district is a wholesaler that provides water
3 supply to 13 retailers over which it has no regulatory
4 authority. Even if the district and the region as a whole
5 comply with the policy, or even over-complies, the
6 independent actions of a single water retailer over which
7 the district has no control could reduce the reliability
8 of 40 percent of Santa Clara County's water supply.

9 A reduction or cessation of the district's
10 imported supplies from the Delta consistent with this
11 proposed regulation, could result in an over-drafting of
12 the local groundwater basin, subsidence, and reduction in
13 emergency supplies. This is an example of how the
14 Council's regulation of local activities could result in
15 unintended consequences that subvert the coequal goals.

16 Finally the proposed regulations exempt one-year
17 transfers from the covered-action review process only
18 until January 1st, 2015. One-year transfers are critical
19 for meeting the districts dry year shortfalls in supply.
20 This is an important and vital water management tool.
21 It's time sensitive and could be at great risk if each
22 transfer is subject to a review process. That may take up
23 to 150 days. This would conflict with the coequal goal of
24 improving water supply reliability. The council should
25 continue to exempt one-year transfers from its

1 covered-action review process.

2 There are a number of additional deficiencies in
3 the proposed regulations as well as in the draft plan and
4 EIR that are detailed in comment letters provided by the
5 State Water Contractors and San Luis Delta-Mendota Water
6 Authority and the State and Federal Contractors Water
7 Agency on behalf of Santa Clara Water District and other
8 water agencies. The District has also provided separate
9 comments on the draft plan and EIR. We welcome the
10 opportunity to work with the Delta Stewardship Council to
11 develop more defensible regulations that would support the
12 dual goals of ecosystem restoration and water supply
13 reliability.

14 Thank you.

15 MR. ISENBERG: Thank you, Ms. Kao.

16 The next speaker is Mr. Zuckerman. And after
17 Mr. Zuckerman, Mr. John Rubin.

18
19 THOMAS ZUCKERMAN

20 CENTRAL DELTA WATER AGENCY

21
22 MR. ISENBERG: Good morning, Tom.

23 MR. ZUCKERMAN: Good morning, Mr. Chairman and
24 members of the Council. I am Tom Zuckerman, representing
25 the Central Delta Water Agency.

1 My first purpose today is to verify that you've
2 actually received the comments and are considering them
3 from the agency that were submitted in writing. And if I
4 can verify that, I can shorten my comments.

5 MR. ISENBERG: Gentlemen, you're communicating
6 with each other. Would you please identify letters by
7 either a date or both of you nod or say yes at the same
8 time that you know what you're talking about for the
9 record?

10 MR. ZUCKERMAN: Mr. Ray has answered my question
11 in the affirmative. I was referring to the documents that
12 were forwarded within the deadline last week.

13 MR. ISENBERG: Good. Mr. Ray from the Delta
14 Council staff acknowledges receipt of those documents.

15 Thank you.

16 MR. ZUCKERMAN: And my comments really are today
17 that I think it's important that you consider those
18 comments seriously. They make several suggestions for
19 amendments to the regulations. They point out what we
20 consider to be rather obvious inconsistencies between the
21 proposed regulations and existing law. There are more or
22 less self-cancelling provisions in your authorizing
23 legislation and in those regulations. It talked about not
24 being inconsistent with existing Water Rights Law in
25 California and so forth and so on. Which render the

1 regulations that you're proposing to adopt somewhat
2 ambiguous. Because, as we point out, many of them are or
3 appear to be directly inconsistent with laws that you
4 purport not to be interfering with. And it's important
5 that your actions be as clear as possible.

6 I think the gentleman from East Bay MUD addressed
7 more or less the same issue. And I think you need to go
8 back through what you're proposing to do and
9 make -- either declare your intention to be in conflict
10 with the laws that we've sited in our comments, or correct
11 your regulations so that they are not.

12 By and large, the other general criticism I think
13 that we are making to put it into the context of super
14 goal and all that is you appear to be running interference
15 for some things that you purport not to be doing directly.
16 And that is you're creating a blocking path for both the
17 flow regulations that you anticipate getting from
18 State Water Resources Control Board and the environmental
19 proposals that you anticipate getting from the BDCP.

20 I think both of those actions are really
21 inappropriate here. The actions of the State Water
22 Resources Control Board can stand on their own. The BDCP
23 is going to have to stand on its own as well, and appears
24 to be flailing around in that regard. So I realize it
25 tends to make your plan or your regulations look a little

1 bit more complete, but I think it's inappropriate the way
2 you've approached that.

3 Finally, what I'm going to urge you to do is to
4 step back from this process a little bit. Try to collect
5 yourselves as to where the whole process is going. I've
6 talked to you about near-term actions in the past. I've
7 talked to you about loading too much of the burdens of the
8 correction of the Delta thing on the Delta itself, on the
9 people that live there, upon the people that work there,
10 upon the businesses that are conducted there, and on the
11 fish and wildlife that live there.

12 And really, in sum, what you're doing -- and I
13 think others have addressed this -- you're making it more
14 difficult for people who are trying to carry out their
15 responsibilities in the Delta by imposing additional
16 requirements, another level of review and so forth on it.
17 And in particular I would refer to the many times I have
18 sat here and talked to you about the efforts of the panel
19 in the Delta to generate flood control projects. It
20 really is going to be much more difficult for us to carry
21 out those proposals under our efforts under the proposals
22 that you are making. And I don't think that's in your
23 best interest, in my best interest, or anybody else's best
24 interest.

25 We've made remarkable progress on flood control

1 in the Delta. We're trying to do every day to improve
2 that, and to put a bunch of criteria in there that would
3 be new and would be burdensome I think is a horrible
4 mistake at this time.

5 If you have any questions, I'd be happy to try to
6 answer them. But other than that, I'm through.

7 MR. ISENBERG: Thank you, Mr. Zuckerman. I
8 appreciate it.

9 Mr. Rubin from San Luis and Delta-Mendota Water
10 Authority. And after Mr. Rubin, Mr. Erlewine from State
11 Water Contractors.

12 Mr. Rubin?

13
14 JOHN RUBIN

15 SAN LUIS AND DELTA-MENDOTA WATER AUTHORITY
16

17 MR. RUBIN: Good morning, Council members. My
18 name is John Rubin. I'm Senior staff Council for the
19 San Luis and Delta-Mendota Water Authority.

20 The San Luis Delta-Mendota Water Authority has
21 29 members, 27 of which contract with the United States
22 Bureau of Reclamation for water from the Central Valley
23 Project. The water that's delivered to the Water
24 Authority Members supports approximately 1.2 million acres
25 of agricultural land, 100,000 acres of wetlands, and

1 supports in excess of one million people in Silicon
2 Valley.

3 The Water Authority and its members value the
4 role the legislature provided to the Council. And the
5 Water Authority appreciates the opportunity to comment to
6 you on the proposed regulations. The Water Authority has
7 significant concerns with the path that the Council is
8 taking. The Water Authority has submitted comments on the
9 draft Delta Plan and the environmental documents, and it
10 has also submitted approximately 25 pages of comments on
11 your proposed regulations. And my comments today are
12 focussed on the proposed regulations.

13 For the regulations proposed by an agency
14 including the Council, the Administrative Procedure Act
15 and regulations adopted by the Office of Administrative
16 Law require regulations to be within the authority
17 delegated to the agency. That the regulations are
18 demonstrated to be necessary, clear, or unambiguous, and
19 to be consistent.

20 The Water Authority explained in its written
21 comments why the regulations proposed by the Council do
22 not satisfy most of those criteria. Today I will not go
23 into detail, but the detail was provided in the written
24 comments. In the comments the Authority submitted, the
25 Authority also raised concerns with the cost analysis that

1 was prepared for the proposed regulations. And that cost
2 analysis, too, is deficient.

3 I wanted to highlight one point that we did make
4 in our comments. The analysis suggests that the
5 regulations do not add substantive requirements beyond
6 what is already required under existing law. That
7 assumption is not explicitly stated or supported by
8 citation which is a legal deficiency in and of itself.
9 But the assumption if made would render the regulations
10 unlawful because of the necessity requirement established
11 by the Administrative Procedure Act and OAL's
12 administrations.

13 Also, the assumption, if made, would be
14 arbitrary. Given the expansion of the authority
15 identified by the Water Authority in its comments and by
16 the State Contractors in its comments.

17 With that, I will close by expressing the
18 Water Authority's hope that the Council will work with the
19 Water Authority and its member agencies to address the
20 concerns that I've expressed today, and that the
21 Water Authority has expressed in writing to you.

22 MR. ISENBERG: Mr. Rubin, thank you very much.

23 Mr. Erlewine from the State Water Contractors.
24 And after that Ms. Meserve from the Local Agencies of the
25 North Delta.

1 TERRY ERLEWINE

2 STATE WATER CONTRACTORS

3
4 MR. ERLEWINE: Good morning. Terry Erlewine from
5 State Water Contractors. We represent at State Water
6 Contractors 27 out of the 29 water contractors that have
7 contracts for water supply from the State Water Project.
8 Twenty-two of our agencies are urban contractors, the
9 other five are Ag.

10 Our urban water agencies have prepared urban
11 water management plans as required. They're all on path
12 to comply with the 20 percent by 2020 requirement. Ag
13 water agencies in our area all have a high level of
14 efficiency both on farm and systemwide. Our water
15 agencies have evolved, and for the past 20 years have
16 evolved to the strategy suggested by the Delta Plan of
17 taking more water in wet years when it's available and
18 taking less in dry years. Fortunately the situation we're
19 in now is that the water in wet years is being reduced.
20 So that's a challenge.

21 We've provided input to the Delta Stewardship
22 Council and the Delta Plan several times either directly
23 or through the State and Federal Contractors Water Agency
24 and individual members. My comments today are very brief
25 to supplement our written comments.

1 Overall, we appreciate that the Stewardship
2 Council has made some positive changes to the Delta Plan;
3 however, we do have some concerns that are continuing.
4 Overall we were seeing the Delta Plan as being an
5 opportunity to provide coordination for all the various
6 activities in the Delta. I think that has been replaced
7 to some extent by more of an emphasis on regulatory
8 approach. Which we don't think is very helpful. And
9 we're concerned that some of the regulatory actions being
10 taken are beyond the scope of what the Delta Stewardship
11 Council's authorized to do.

12 Our primary specific concerns, which we've talked
13 about before, are the Water Resources Policy 1 and also
14 the Appeals Process for the Bay Delta Conservation Plan.
15 We believe it's not too late to make revisions that
16 address these concerns in our comments. And thank you for
17 the ability to comment today.

18 MR. ISENBERG: Mr. Erlewine, thank you very much.

19 The next speaker is Ms. Meserve from the Local
20 Agencies of the North Delta. And then Mr. Lynn Moreno
21 from the Central Valley Flood Protection Board.

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MR. ISENBERG: Ms. Meserve, good to see you again.

I just want to hit on two major concern areas that we have. In looking at the regulations that are being proposed, it looks like there are some repetition with other statutory definitions, and also conflicts with existing statutory and regulatory definitions. In particular, we're concerned about duplicating definitions that are already in CEQA and they're implementing regulations, and also conflicting with those same provisions.

47

1 40 years of Case Law baseline -- all the other things we
2 work on in CEQA. And we've been raising this comment
3 throughout the Delta Plan process. And I would urge
4 Council for the district to look carefully at this issue
5 and engage outside special council on CEQA to make sure
6 we're not creating a lot more confusion than needs to
7 occur with respect to these definitions and the
8 regulations.

9 We're also concerned about the definitions of
10 flood plan and floodway, and how those conflict with other
11 definitions in the Central Valley Flood Plan and other
12 places in the Water Code. There is also concern that it's
13 not clearly described what the difference between routine
14 maintenance and substantial rehabilitation of levees would
15 be. We want to courage levee districts to do the
16 maintenance that would reduce risk in the Delta and
17 increase flood protection, to the extent that what we
18 would consider to be routine maintenance becomes covered
19 actions and becomes subject to a lot of additional
20 analysis. It's going to make those projects infeasible.

21 With respect to the cost analysis, we've
22 submitted some detailed comments on that. And I will be
23 getting a little bit more into that with written comments
24 later today. But we're very concerned about the
25 additional analysis of covered actions that our districts

1 might be undertaking in the future, and how that will make
2 what are already projects that are difficult to carry out
3 because of their cost, like levee improvement projects.
4 Now there will be a lot of new requirements to justify not
5 building setback levees, which are really inappropriate in
6 many locations in the Delta as we've described in previous
7 comments.

8 Also a lot of additional analysis to explain
9 compliance with reduced reliance on the Delta for in-Delta
10 water users, which as we've explained previously, in-Delta
11 water users don't have any choice but to rely on Delta
12 water. So we still don't agree with the policy, and then
13 it's still got the same problem in the implementing
14 regulation. And it would also create a lot of confusion
15 because the rigs aren't clear that the smaller water
16 districts, like under 25,000 acres, are clearly exempt
17 from the water management plan requirements as in the
18 Water Code. So, again, a clear pathway is not laid out
19 for how the smaller districts are supposed to comply with
20 reduced reliance provisions.

21 Additionally the floodplain restrictions for
22 covered actions in the future are confusing and could lead
23 to a lot of additional cost on what are already expensive
24 projects. And that should be promoted.

25 So the cost analysis, we are concerned that it

1 minimizes the cost of the implementing the regulations in
2 the Delta. And that it should be revised to more clearly
3 reflect what the actual cost will be.

4 At the same time we continue to be concerned that
5 the Delta Plan, not so much in the rigs, continues to
6 blindly promote the BDCP and the new conveyance. Which
7 unlike the projects that I'm talking about, levee
8 maintenance, small water projects for in Delta water uses
9 where land use is already extremely restricted and no
10 growth is really allowed except with minor exceptions, the
11 BDCP has the most potential to substantially impact
12 implementation of the coequal goals. More so than any of
13 the actions that local agencies would propose in the
14 Delta. And yet the plan blindly promotes completion of it
15 without attempting to provide any guidance to it.

16 So we would ask that Council rethink what it is
17 trying to accomplish with the plan and also with the
18 regulations. It's not clear looking at the regulatory
19 requirements from OAL and in the Government Code that
20 these regulations are necessary to implement the Delta
21 Plan. And moreover, it doesn't look like the appropriate
22 cost analysis and clarity has been provided for OAL to
23 approve these regulations at this time.

24 Thank you.

25 MR. ISENBERG: Thank you very much.

1 Mr. Marino from the Central Valley Flood
2 Protection Board. And after Mr. Marino, Ms. Brenda Burman
3 from Metropolitan Water District of Southern California.

4 Mr. Marino?

5
6 LEN MARINO

7 CENTRAL VALLEY FLOOD PROTECTION BOARD
8

9 MR. MARINO: Good morning. I'm Len Marino. I'm
10 Chief Engineer with the Central Valley Flood Protection
11 Board. I'm here today to make some comments -- some real
12 brief comments on the rulemaking process, particularly
13 with respect to regulations under Title 23.

14 As you may or may not know the Central Valley
15 Flood Protection Board also has rules and regulations
16 under Title 23, Division 1 waters. And we had the
17 opportunity to work collaboratively with your staff over
18 the past week or so. We had two or three very productive
19 meetings. And the goal of those meetings was to get some
20 consistency between the rules that we have under Title 23
21 and the rules that you are proposing under Title 23. The
22 purpose was to resolve comments -- conflicts areas, and
23 consistency. We're all about consistency.

24 So we have put together about a five-page
25 document and we shipped that over to the Delta Stewardship

1 Council earlier today. And I'm just here today to go over
2 some of the highlights of that letter that we sent earlier
3 today.

4 So we tried to lay this out in the most helpful
5 way so that you could respond to the comments and make it
6 as productive as possible. So what we did was we took the
7 outline of the Title 23 regulations that you have on your
8 Web site and we made bullet comments to each section. And
9 I'll be addressing those right now.

10 Under Section 5001 we added a few definitions and
11 we proposed a few more definitions. Particularly we
12 wanted to have a definition of the Central Valley Flood
13 Protection Board included in there. And we also commented
14 on the Central Valley Flood Protection Plan. The goal of
15 which is to make the reader of your regulations aware that
16 these other entities exist.

17 We also are suggesting modifying some of the
18 definitions, including those concerning floodway, urban
19 area and urbanizing area. We also took a stab at helping
20 with the definition of covered action. Quite a bit of
21 comments on that. And like I said before, we did work
22 with your staff on that and the conversation was very
23 helpful.

24 When you get down to Section 5014 there was some
25 language in there regarding prioritization of state

1 investments in Delta levees and risk reduction. There was
2 a date in there that I wanted to call to your attention
3 that was listed as January 1st, 2015. And that was the
4 date which the Council shall develop funding priorities
5 for state investments in the Delta. The Central Valley
6 Flood Protection Plan, the five-year anniversary of that
7 plan is July 1st, 2017. The Board is suggesting that we
8 somehow work with that date, because that was the date by
9 which the new Central Valley Flood Protection Plan will
10 take effect. It will be adopted by the Board prior to
11 that. And that plan will contain elements of what you're
12 speaking of in this section here. Which is funding
13 priorities and funding mechanisms for levee construction
14 and rehabilitation in the Delta.

15 So as I said earlier, we're all about
16 consistency. And I wanted to bring that date to your
17 attention. That that is probably the best date that we
18 can promise at this point.

19 Getting down to Section 5016, we made some
20 collaborative changes to the language for the definition
21 of floodways and floodway protection. And the same way in
22 Section 5017.

23 And in conclusion I wanted to thank your staff
24 for allowing us the opportunity to work collaboratively
25 with them in helping to improve the regulations and obtain

1 some kind of consistency between the regulations that the
2 Council is proposing and the regulations that exist for
3 the Central Valley Flood Protection Board.

4 Thank you very much.

5 MR. ISENBERG: Mr. Marino, thank you very much.

6 Ms. Burman from Met, and Mr. McCleery then a
7 Discovery Bar resident.

8 Ms. Burman?

9
10 BRENDA BURMAN

11 METROPOLITAN WATER DISTRICT OF SOUTHER CALIFORNIA

12
13 MS. BURMAN: Good morning, Mr. Chairman and
14 members of the Council. My name is Brenda Burman. I'm
15 with Metropolitan Water District of Southern California.

16 Metropolitan comments were filed by the State
17 Water Contractors, written comments on behalf of
18 Metropolitan and all of its member agencies. And we
19 concur with those comments.

20 Metropolitan delivers water through the Delta to
21 approximately 19 million people -- over 19 million people
22 in Southern California. And a lot of the written comments
23 are very detailed, and we urge you to look at those. I
24 wanted to make a few comments about the Reduced Reliance
25 Policy, about proposed policy 5005.

1 Within that policy, the Council gives itself
2 broad discretion to review and judge local water
3 management decisions outside the legally defined Delta.
4 It also expands State Law in calling for an implementation
5 of urban water management plans and agricultural
6 management plans. Something that is not currently called
7 for in State Law. It expands State Law by calling for an
8 ambiguous, yet-to-be-defined provision that will go into
9 2015 urban water management plans and agricultural water
10 management plans in the future.

11 We believe that is an expansion -- that is
12 outside the authority that was granted the Council to act.
13 We believe that's true from the plain language of the act.
14 But we also have in the detailed comments from the State
15 Water Contractors on the San Luis and Delta-Mendota Water
16 Authority detailed comments looking at the legislative
17 history. And that legislative history looks at previous
18 versions of the act; it looks at quotes from the sponsors
19 of the different provisions of the Delta Reform Act, and
20 has quotes from those sponsors, looking at the detailed
21 provisions of even just the reduced reliance policy. So I
22 urge you to review those.

23 Outside of the authority issue, the Office of
24 Administrative Law also calls for new regulations to be
25 clear, to be concise, to be understandable. To not be

1 duplicative. I believe the Reduced Reliance Policy also
2 fails on this. This provision -- the provision is
3 confusing. So it starts off with a definition of success.

4 The definition of success is: A significant
5 reduction of water use in the Delta, water use from the
6 Delta, or a significant reduction in the percentage of
7 water use.

8 Outside of this, I'd like to say that
9 Metropolitan itself has dedicated itself to this goal
10 before it was written by the Council. And that
11 Metropolitan has pledged that all future expanded
12 increased water demands will be met by local conservation
13 by recycling. It won't be met by increased use from the
14 Delta.

15 But looking at the statute itself and getting
16 away from where Metropolitan will be, the definition says
17 this is what you should do. But we were assured back in
18 July -- and I believe in July it wasn't part of the
19 policy. It was sort of lead-in language that went into
20 the policy. Now it's part of the policy. But we were
21 assured in July, other contractors were assured, that's
22 not our goal here. We're not mandating reduced supply,
23 we're not mandating reduced percentage and supply. What
24 we're mandating are these three things. And these three
25 things are:

1 You have to tell us you've done your urban or
2 agricultural management plan if the law says you have to
3 do one. You have to implement every part of that plan if
4 it's feasible, if it's cost effective, if it's in your
5 timeline. And you have to, by 2015, add a provision which
6 we'll figure out later.

7 When it does that, you are saying that the
8 definition of success is not part of what we're telling
9 you to do right now. But when you look at the initial
10 statement of reasons in the OAL package it says that you
11 are mandating reductions in water use. And I think that's
12 confusing to those of us who are looking at the policy
13 saying, "What is it supposed to accomplish? Is it really
14 just supposed to accomplish a lot of water reporting? A
15 lot of reporting on successes for Metropolitan?" We could
16 talk about billions of dollars spent on conservation and
17 recycling and storage over the last 20 years. Some other
18 agencies have similar stories about huge successes with
19 recycling, with groundwater recovery, with efficiency
20 projects. And we are not concerned with kind of our
21 ability to show off the successes of Southern California.

22 But I am confused that you have a legal problem
23 here. And that you have a legal problem with what
24 authorities you're asserting. And you have a legal
25 problem just with trying to tell people what they're

1 supposed to do. Having confusing language.

2 So we've worked with the Council since the
3 beginning of this process. We will continue to work with
4 the Council. And I thank you for your time.

5 MR. ISENBERG: Thank you, Ms. Burman.

6 The next speaker is Mr. McCleery from
7 Discovery Bay and then Melinda Terry from the North Delta
8 Water Agency and others.

9 Mr. McCleery?

10

11 MIKE McCLEERY

12 DISCOVERY BAY RESIDENT

13

14 MR. McCLEERY: I'm Mike McCleery. I'm a resident
15 of Discovery Bay. And I'm here to speak as a taxpayer and
16 try to respond to what I've heard from the water agencies.

17 For example, the Santa Clara Water District is
18 requesting a permanent exemption for water transfers. And
19 what I'm saying is everybody is here, we're all being
20 parochial if you will, protecting our own issues. And
21 we're looking as a taxpayer. We're looking to the Delta
22 Stewardship Council to provide an overall comprehensive
23 plan. Since the water from the Delta provides water to
24 substantial part of California, I think the Delta
25 Stewardship Council here needs to look at all water users

1 and mandate things like conservation. I didn't see
2 anything in the plan that mandates conservation for
3 agriculture, for example.

4 I come from business environment. I'm used to an
5 organization chart. You can see clear lines of authority
6 and responsibility. If you look at the charts involving
7 the water in the Delta, it is confusing at best. So what
8 I'm hoping as a tax payer is the Delta Stewardship Council
9 will take charge, be at the top of this organization's
10 chart, and try to manage all of these parochial agencies
11 and their particular requests. If we don't do that, we're
12 going to see a big decline of Delta water quality.

13 Thank you.

14 MR. ISENBERG: Mr. McCleery, thank you very much,
15 sir.

16 Ms. Terry? I saw you walk in. There you are.

17
18 MELINDA TERRY

19 NORTH DELTA WATER AGENCY AND CALIFORNIA CENTRAL VALLEY

20 FLOOD CONTROL

21
22 MS. TERRY: Good morning. I'm Melinda Terry.
23 And I'm not going to repeat any of the comments. We did
24 submit written comments on behalf of California Central
25 Valley Flood Control Association.

1 But one thing we did not comment that the land
2 folks did, which I agree with their comments, is on the
3 cost analysis for the proposed Delta Plan regulations.
4 The costs that are talked about on these are quite
5 extensive. And you're talking 5.4 million to 25 million
6 per mile. That was for the 200-year protection. It's
7 300,000 per mile for the levees.

8 And part of the comparison that was used in this
9 cost analysis mentions a lot of projects. There's a whole
10 grid on page A1. Those are all urban districts. And I
11 think -- the concern here is I think there's a real
12 misunderstanding about the budgets that Delta Reclamation
13 Delta District has compared to an urban district. So the
14 cost associated with just trying to provide the analysis
15 to show that they can't do a setback levee for whatever
16 reason may exist on that island is really concerning
17 because of their budgets. You'll have the unintended
18 consequence of them not being able to do these levee
19 improvements, these rehabilitation and improvement
20 projects.

21 So I don't think that is your intention, and of
22 course it goes against the statutes to of course protect
23 people from flood and protect the Delta as a place.

24 They also have -- and you can say, "Okay.
25 Melinda, they can go assess those people." There aren't a

1 lot of people in some of these islands. So they're
2 assessment capacity only has a certain point. So, again,
3 if you make these costs so prohibitive, they can't do the
4 project. And we will see a halt to a lot of these
5 projects.

6 And I've said this before, but that's concerning,
7 particularly right now, when we still have prop 1E money
8 and prop 84 money that these districts can use to do some
9 levee improvements to keep up with sea level rise and
10 other things that are affecting the levees.

11 In addition, the setback is in the rags as being
12 talked about for widening the flood plan and expanding
13 Hyperion habitat. Those are benefits to the broader
14 public, if you will, and not just to the island. And
15 those are protected by those levees.

16 So there is a broader public good here, yet the
17 cost burden is really being born only by those people in
18 order to provide that greater good. In particular, the
19 habitat improvements that could be made, a lot of the
20 habitat that is being talked about being done is being
21 done in order to either allow the south Delta pumps to
22 continue to have their ESA protections. That's some of
23 the requirements they have under their bi-ops to do
24 additional habitat. And then the BDCP of course is an
25 HCP. That again is to allow them to continue to have ESA

1 take for their south Delta pumps as well as for new north
2 Delta pumps.

3 So it wouldn't be fair and it doesn't seem
4 appropriate for, again, a local area with their levees to
5 them to be providing a benefit that would accrue to others
6 outside of this area.

7 The other thing -- I think I'll leave it at that.
8 But ask for you to really, really relook at what's being
9 asked. And think if there's a different way to go about
10 doing it so that it's not an automatic cost that will then
11 result in the districts not doing levee improvement
12 projects, because I know that's not your intent.

13 I'll leave it at that for our comments for the
14 Central Valley Flood Protection Association. Because we
15 already submitted written comments. And I think the other
16 agencies submitted comments that would cover anything else
17 we had.

18 But I'm going to switch my hat and now put on my
19 North Delta Water Agency hat. And we did not submit
20 comments on behalf of North Delta Water Agency. But I did
21 want to at least mention that our agency does agree with
22 the comments submitted by the Central Delta Water Agency
23 in their January 14th, 2013 letter, regarding Section 5005
24 water reliance. Thank you.

25 MR. ISENBERG: Ms. Terry, thank you very much.

1 Ladies, are there any more blue slips? No more
2 blue slips?

3 All right. Ladies and gentlemen, let me just
4 ask, is there anyone in the audience who would like in
5 addition to comment on this rulemaking procedure -- the
6 proposed rules and the hearing today?

7 Is there anyone else who would like to comment?

8 Okay. Seeing no one else in the audience --

9 Oh, I'm sorry. Sir, could you come right up here
10 and identify yourself? And before you go out of the room,
11 if you'd be good enough to fill out one of the blue forms
12 and turn it over to the ladies, we would appreciate it
13 very much.

14

15 STEVEN DINGER

16

17 MR. DINGER: Thank you. Sorry I was just
18 listening to all the comments, and I thought that --

19 MR. ISENBERG: Could you give us your name first?

20 MR. DINGER: Yes. Steven Dinger. D-I-N-G-E-R.

21 I'm currently living in Discovery Bay, but have
22 been on or near the Delta for 40 years.

23 A little history, we used to have saline water,
24 brackish water at the Moth Ball Fleet. Now that's sort of
25 a line back in the late '70s. And then it arrived in

1 Pittsburgh. And as we noticed it, it started going up to
2 Sacramento towards Rio Vista, and it was also going
3 towards Antioch. Today it's at Antioch. In fact, during
4 the lean years of rain, we find it all the way to
5 Bethel Island, and certainly it's pushed up the
6 Sacramento River.

7 You know, historically you look at the
8 prospective of that's what we have today in the canals.
9 And in those three years of drought, we got really nailed.
10 That's in the habitat, the ecosystems and certainly in the
11 quality of the water throughout the Delta. That's a
12 reality.

13 I can understand why you might want to pump
14 water. Some of the best water, by the way, that the Delta
15 ever sees, directly down south. It makes sense for the
16 people down south. It does. It's automatic. The quality
17 of water is as good. But where I have a difficulty with
18 is where the water will be better in the south than it
19 will be here. And because of that saline solution going
20 up the Delta, we're all going to be affected by it. And
21 eventually I know the historical perspective is eventually
22 you'd have to put d-cell plants down south. But the
23 problem is if you do what you're expecting to do, then we
24 really have trouble. Because we'll have the d-cell plants
25 right here in our backyard. Because the salt water will

1 be here. And it will be very awkward to make good water
2 out of that without doing the D cells.

3 Now, why you didn't start this process down south
4 20, 30 years ago, I have no idea. Because there were
5 times in the Monterey Peninsula when the droughts were
6 happening that they were proposing having a d-cell plan
7 right off of Monterey. So that's a historical
8 perspective. And I just question -- it's a little like
9 the FRAM oil filter commercial that says, "We'll get you
10 now or we'll get you later." And the reality is that's
11 what's happening with our water. And it saddens me
12 because so many people rely on it.

13 And we have in business this idea of a
14 product -- and certainly water is a product -- that
15 there's a fixed cost and that there's also a variable
16 cost. And then it arrives at a total cost analysis.
17 We're having trouble trying to calculate what the real
18 cost of this project is. Because the reality of fixed
19 cost is one thing, but we all know, especially boaters and
20 so on, that the cost of maintaining systems of this nature
21 could be ten, fifteen percent of the total actual cost.
22 So put that in perspective when you start looking at total
23 cost. And I think you'll start to come up with the idea
24 that maybe this isn't the solution.

25 And certainly there have been some excellent

1 speakers this morning relating the idea that we have the
2 technology, we have the brainpower. We need to do a
3 better job at figuring out what the real total cost is.

4 Thank you.

5 MR. ISENBERG: Thank you very much, Mr. Dinger.

6 Is there anyone else in the audience that would
7 like to speak?

8 Mr. Dinger, if you'd go over and get a blue slip,
9 we'd appreciate it. Thank you very much.

10 Okay. Seeing no other speakers I'd like to call
11 on our two Chrises over there, our legal council and our
12 Executive Officer at least to advise and remind the
13 Council again the timeline and the procedures from this
14 point.

15 Mr. Stevens?

16 MR. STEVENS: Thank you, Mr. Chair.

17 First, I just wanted to ask you to call on any
18 speakers that had filled out the gold cards that were
19 completely satisfied with the rulemaking project. Did you
20 call on all those speakers? So I guess we didn't have
21 any.

22 MR. ISENBERG: Isn't it illegal for a lawyer to
23 have a sense of humor?

24 MR. STEVENS: Well, that's very debatable whether
25 I have one.

1 MR. ISENBERG: Keep it under control there,
2 Mr. Stevens.

3 MR. STEVENS. Okay. Well, the first thing I
4 would like to say as having helped to put this hearing
5 together is thank you to the Council for holding this
6 hearing. As well as the hearing that we had previously
7 that was suggested by -- that was a great idea. And also
8 thank you to all the people in the audience that showed
9 up. It's very hardening to hear the comments. I'm just a
10 staff lawyer that's trying to do the people's business.
11 But it is very disheartening. Especially for the people
12 that aren't paid to be here. So thank you for coming and
13 the good comments.

14 So having said that, the process going forward as
15 of today, the close of business, the comment periods will
16 have closed, not only on the EIR process, but also on the
17 rulemaking process and on the Delta Plan process. So in
18 essence, we had three processes that will ultimately be
19 coming to a head. The ultimate vote will be by the
20 Council adopting the Delta Plan once it's certified, the
21 final EIR, and adopting the associated regulations. And
22 the associated regulations are obviously the regulations
23 that you good people commented on here.

24 So what do we do next? We've got a whole slew of
25 comment letters. I think Mr. Knopp -- do you have

1 numbers? Mr. Knopp is going to fill us in on the numbers
2 that we have to date. But as staff what we do now is we
3 have to go back and review all the comment letters and
4 prepare draft responses to the comment letters. So during
5 the EIR process, responses to the EIR comments have to be
6 included in what's called a final EIR. And the comments
7 that we have received in the rulemaking package have to be
8 responded to in what's called a final statement of reasons
9 for the rulemaking package.

10 So as staff we have to sort through all those
11 comments, we have to prepare our suggested responses to
12 those comments. And the plan is this: We're now at the
13 end of January. This will take some time to sift through.
14 And what we've told the Council is that we intend to come
15 back to them as staff at their end of March meeting. And
16 I believe that's March 28th -- 29th. And this will be a
17 very important meeting. This will be a meeting where we
18 will present, not only on the EIR, but on the rulemaking.
19 And they'll basically be segmented.

20 So it will be first, what have we learned through
21 the EIR process? You'll recall we put out an original
22 EIR, recirculated EIR. We got a whole bunch of comments.
23 We will inform the Council and staff what we think we
24 learned through the EIR process with suggested changes
25 either to the EIR or to the Delta Plan and associated

1 rules. We'll next move to the rulemaking package. And
2 we'll basically say the same thing to the Council as
3 staff. We'll say, "This is what we think we have learned
4 through the rulemaking process." And if we have suggested
5 changes to the rules, we'll bring those to your attention.

6 Similarly with the Delta Plan process. So we've
7 gotten comments, they're kind of crossover comments for
8 the most part with regards to the rulemaking and Delta
9 Plan process. But if we got comments that we think are
10 worthy of your deliberation, further discussion, and that
11 might necessitate changes in the Delta Plan or the rules,
12 we'll bring those to your attention.

13 And at that March meeting what we'll be looking
14 for is direction from the Council as to making any
15 necessary changes to move the process to the final stage.

16 The final stage could be, and we're not there yet
17 because we haven't gone through all the comment letters,
18 but it looks like as staff we recommend certain changes to
19 the rulemaking package, to the regulations themselves,
20 that Council agrees with that and directs us to make those
21 changes. In all likelihood that will necessitate floating
22 those again with the public for another 15-day period and
23 taking public comments on the revisions to the rulemaking
24 package.

25 That would like -- if that were to happen, that

1 would likely take place April, during the April period.
2 The ultimate goal is to have final direction from the
3 Council, final documents that we can present to you, and
4 the order of adoption would be to certify the final EIR
5 ahead of taking a vote on the Delta Plan and its
6 associated regulations.

7 Once you've adopted the Delta Plan and the
8 associated regulations, we would then take the regulatory
9 package, ship it over to the Office of Administrative Law
10 for its approval. And as many of the speakers have noted
11 here and as we've talked about before, they have certain
12 standards of review. They'll have 30 days to review the
13 package. Ultimately those regulations will take legal
14 effect and the covered action, consistency certification
15 process with the potential appeals will then kick into
16 gear.

17 So the next step, again, for us as staff is to
18 sift through the pretty significant amount of comments
19 that we've received. But really at the end of March, that
20 will be the big meeting when we will present to the
21 Council, again, the comments that we think rise to the
22 level of Council, the need for Council further
23 deliberation, discussion and final direction. And what
24 we've got, I'll give you an example -- we've now gone
25 through over two years of deliberations. We've heard a

1 lot of arguments that we're familiar with. And we'll get
2 a lot of comments along those same lines.

3 But what we anticipate as staff is bringing to
4 you comments that rise to the level of new information or
5 a new way of looking at things or a new approach for
6 direction to take the process forward. So with that, I
7 think Chris wants to give you --

8 MR. ISENBERG: Mr. Knopp, what can you tell us
9 about the volume of comments so far?

10 MR. KNOPP: Well, the comments, we've got about
11 190 separate comments, and still counting. I will still
12 expect some more today obviously. And they're broken out
13 into letters of about 120 letters. The number of comments
14 addressing the Delta Plan were about 580.

15 MR. ISENBERG: So when you say that, 580 comments
16 contained within those hundred --

17 MR. KNOPP: Within those letters, yes.

18 The number of comments within those letters on
19 the recirculated draft EIR were about 660. And the number
20 of comments addressing the rulemaking package were around
21 380. So we expect those to change, but that gives you a
22 pretty good idea of the breakdown.

23 MR. ISENBERG: Don?

24 MR. NOTTOLI: Question for either Chris.

25 But in the hearing we had a couple weeks ago

1 there was some additional information presented regarding
2 the cost analysis. And there's been comments today, I
3 trust some of the correspondence have not read all that,
4 but to address that, what is the process for addressing
5 questions that relate to that? And if there is a decision
6 by staff respectfully that there needs to be additional
7 work done, how does that bubble up into the other process?
8 I mean, it's part of, but it's a critical piece in my
9 view. And I believe, obviously, it's there for a reason.
10 And I've heard some things today for previously. So where
11 does that fit into all this?

12 MR. STEVENS: That's a good question. And we
13 presented at the previous hearing -- and it wasn't new
14 information -- but again, we have a regulatory package
15 obviously on the street right now. And the idea was to
16 present some clarifying background discussion about what
17 the document's, the regulatory, economic, physical and
18 impact statement actually mean where the numbers were
19 derived from, that sort of thing.

20 But the question that you ask has to go with
21 revision of the regulatory process potentially -- the
22 package potentially. So it's not only the regulations
23 themselves, but you heard some of the speakers here today
24 testify they had issues with some of the cost estimates or
25 some of the methodologies. And again with regards to the

1 physical and economic impact analysis, that ultimately has
2 to be signed off by the Department of Finance, the State
3 Department of Finance before it goes over to the Office of
4 Administrative Law.

5 So all of the methodologies used, all of the
6 information there has to pass muster with Department of
7 Finance. So again we've said that before, but let's
8 reiterate that. When staff prepared the information, the
9 methodologies were, at least in the professional judgment
10 of the people that prepared it, were methodologies that
11 are standardized, that are reasonable under the
12 circumstances. Obviously you have to look at the
13 circumstances. But in any event, Department of Finance is
14 involved and will be involved.

15 With regard to changes, if we determine that some
16 of the comments are worthy of bringing to your attention
17 at the March meeting some changes that we think are
18 necessitated in the cost pack analysis, those again would
19 be changes just like changes to the actual regulatory
20 language that we might say, "Yeah, there needs to be a
21 tweak with regard to some area. The physical impact
22 statement that we received three comment letters to this
23 effect. We've taken a second look at that, we think
24 that's probably the better approach." And then we would
25 ask for your direction to go ahead and make that change.

1 And then that would all be bundled up in the final rule
2 making package. It would be sent over to the Department
3 of Finance for their sign off. And ultimately the entire
4 package goes over to Office of Administrative Law.

5 So changes can be made, not only to the physical
6 impact statement, but to the statement of reasons, the
7 surrounding justification. We heard comments here about
8 the statement of reasons as well as regulatory language
9 itself. And that may be the case.

10 MR. NOTTOLI: I just want to follow up -- thank
11 you there, Chris.

12 I know at the January 11th hearing Dan Ray and
13 other staff put forth some additional explanation behind
14 some of the cost analysis, how it might apply and given
15 circumstances. But I still have this lingering question
16 in my mind even based on some testimony today about the
17 application in more rural setting and items or areas that
18 we don't have heavy population standards that might be
19 basis for local match for doing certain levee upgrades.
20 And the whole analysis around the 200 year and where it
21 might apply, and whether a piece of that, whether that may
22 interfere with the ability to actually do some of the
23 maintenance, even though that's excluded, because of some
24 of the implications of having to do some of those
25 threshold workups relative to what the plan puts forward.

1 Again, I don't expect today -- it's a hearing for
2 the public -- but that's one of the things that needs to
3 be very clear, not just in the presentation on the 11th, I
4 don't know how that documentation got transmitted beyond
5 that hearing that day. And I brought the summary with me
6 today. But I think that that's going to be important in
7 the minds of a number of folks that we spoke with today
8 and obviously long term in areas that have been more rural
9 areas or less poplar areas in the Delta that rely just as
10 much on the levees as do the population standards and
11 other things that are protected by the levees.

12 MR. ISENBERG: Okay. Thank you.

13 Yes, Ms. Gray?

14 MS. GRAY: Well, first I wanted to thank the
15 public for coming today to make comments. And we
16 certainly understand how important the plan and the
17 process is to not only Council, but to everyone.

18 But I did have a question to Chris regarding the
19 process. I know you kind of explained the fact that in
20 March -- thank you Randy. In March it will be very
21 important to the Council because we will look at whatever
22 suggested recommendations that staff would make based on
23 the comments that we would receive from the public. And
24 you talked about new information or new approaches. So I
25 assume what you would be looking at, anything that's

1 different than what was presented before; is that correct?

2 MR. STEVENS: That's in essence what we intend to
3 do. I was going to say another important point is now
4 that the comment period will have closed, as staff what we
5 will endeavor to do in the next week or so is to actually
6 post all the comment letters on the Web site so people can
7 see what all the EIR comments are on the recirculated
8 draft, what all the rulemaking comments are and the Delta
9 Plan comments. And they're going to be numerous. But as
10 you know a lot of the comments are going to be issues that
11 we've heard before. And so what we'll try to do -- and I
12 think that was your question -- is really get to the
13 things that we think are new, different approaches.

14 MS. GRAY: Right. And I know we've heard, at the
15 different hearings, certainly in the last week or last
16 month, the last one, and this one it talks about
17 duplicative information and cost analysis and clarity and
18 so forth. If in fact there is a significant change that
19 the Council makes at that March 28th or 29th meeting, you
20 talked about it would require going out again for public
21 comment; correct? And that would be a 15-day process; is
22 that correct?

23 MR. STEVENS: That's right. If it's reasonably
24 related to the regulation that you have before you. So if
25 for instance, however, not saying this would happen, but

1 if you decided you wanted a regulation that wasn't related
2 to anything there, that would necessitate a new 45-day
3 comment period. But I'm anticipating these will be
4 refinements if at all on the language that you have and
5 that you've debated now for many, many, many months.

6 MS. GRAY: Did you say 45 days or 15 days?

7 MR. STEVENS: If you decide to make changes that
8 are reasonably related to the regulation, it would be 15
9 days.

10 MS. GRAY: Not 45 days?

11 MR. STEVENS: No.

12 MS. GRAY: Then after that, I guess we're trying
13 to get within the timeline. I know that Council has
14 discussed a timeline for closure. Is all that part of the
15 timeline that the Council has discussed, or from staff
16 that you've given us in terms of final adoption?

17 MR. STEVENS: I believe that's correct.

18 MS. GRAY: I know there's been some talk about
19 the Council's role and authority and so forth. So all
20 those comments will come back to us in March in terms of
21 any recommended changes from staff; correct?

22 MR. STEVENS: Yeah. And we'll talk about some of
23 the big issues are, I think worthy of reiterating. And
24 I'm not intending here to respond to any comments. But
25 you've heard some of the testifiers, you've seen probably

1 some of the comment letters to date. But a lot of them go
2 to the authority of the Council to actually adopt
3 enforceable regulations in general and even more specific
4 policy by policy, regulation by regulation. And I think
5 part of our presentation on March will be as staff to
6 engage with the Council and to take a fresh look again at
7 the underlying enabling statute. And why this Council was
8 established and what the legislature and the governor had
9 intended. There were some comments here about legislative
10 intent. But ultimately it goes back to what Mr. Isenberg
11 always refers to as his golden rod bible here. And it's
12 the Delta Reform Act. So again, we'll start with the
13 Delta Reform Act. But in essence we're going to talk
14 about new issues, issues the staff thinks you as the
15 Council should engage in and give us final direction to
16 get you to the point where you need to take a vote and
17 adopt a plan and the rules.

18 MS. GRAY: And from that part, I guess, of the
19 process, are we looking at two months after that in terms
20 of potential adoption?

21 MR. STEVENS: I think we're looking at -- was it
22 May? Early May for adoption. For consideration, yeah.

23 MS. GRAY: All right. Thank you.

24 MR. ISENBERG: Okay. Ladies and gentlemen, let
25 me add my thanks to you for showing up. A large number of

1 people. We appreciate you coming back and testifying many
2 times and helping us work out this production. We're
3 going to stake a five-minute break before we start up on a
4 regular agenda to allow the court reporter to wind up her
5 activities. Thank you very much. And the hearing on
6 rulemaking is adjourned.

7 (Thereupon the hearing adjourned at 11:21 a.m.)
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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss
COUNTY OF SACRAMENTO)

I, JILLIAN M. BASSETT, a Certified Shorthand Reporter, licensed by the state of California and empowered to administer oaths and affirmations pursuant to Section 2093 (b) of the Code of Civil Procedure, do hereby certify:

The said proceedings were recorded stenographically by me and were thereafter transcribed under my direction via computer-assisted transcription;

That the foregoing transcript is a true record of the proceedings which then and there took place;

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on February 8, 2013.

JILLIAN M. BASSETT
Certified Shorthand Reporter No. 13619